Supreme Court, U.S.
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NO.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

FRANK A. MARULLO, JR., ET AL.
PETITIONERS

VERSUS

NOEL PATRICK CASSANOVA, ET AL.
RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30368
Summary Calendar

NOEL PATRICK CASSANOVA
and KAREN SULLIVAN CASSANOVA,

Plaintiffs-Appellees,

versus

FRANK A. MARULLO, JR., ET AL.,

Defendants-Appellants.

Appeal from the United States District
Court for the Eastern District of
Louisiana (CA-94-0376)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:*

Appellants, judges of the criminal district court for the Parish of Orleans, challenge the district court's refusal to dismiss appellees' § 1983 complaint on the grounds of qualified immunity. An interlocutory appeal is permitted from the court's order only to the extent that qualified immunity was denied as a matter of law. Mitchell v. Forsythe, 472 U.S. 511, 105 S.Ct. 2806 (1985).

Having reviewed the district court's order in light of appellees' complaint, we agree with her first conclusion: taking all of appellees' allegations as true, the appellants, by terminating Mr. Cassanova's employment, may have violated his constitutional right to free speech. This conclusion is

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled priniciples of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

based on Cassanova's allegations that he was terminated because he was acting as a "whistle blower" and was giving advice to the Governor and other public officials about the operations of the Jury Commission. Appellants may or may not have a chance of succeeding in their defense of qualified immunity at trial or at a much earlier point in the proceedings. As the district court recognized, however, it is plainly premature to dismiss this case on the pleadings.

Because the defense of qualified immunity was not erroneously denied, this appeal is DISMISSED.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NOEL PATRICK CASSANOVA and KAREN SULLIVAN CASSANOVA — CIVIL ACTION

VERSUS — NO. 94-376

FRANK A. MARULLO, JR., JAMES F. McKAY, III, DENNIS J. WALDRON, MORRIS REED, GERARD J. HANSEN, PATRICK QUINLAN, CALVIN JOHNSON, and FRANK SHEA — SECTION "N"

ORDER AND REASONS

Defendants have filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) on grounds that they are entitled to qualified immunity and have filed a motion to stay discovery pending resolution of this issue.[1] For reasons stated below, defendants' motion to dismiss on grounds of

[1] The defendants have alleged alternative grounds for their motion to dismiss which will be addressed by subsequent order of this Court.

qualified immunity is DENIED, and defendants' motion to stay discovery pending ruling on the motion to dismiss on grounds of qualified immunity is DENIED as moot.

Plaintiffs summarize their claims as follows:

> Mr. Cassanova was terminated essentially because (1) he engaged in his first amendment right to free speech in reporting financial misconduct to appropriate governmental authorities, and (2) he engaged in constitutionally protected activity in discussing with legislators and individuals in the Governor's office the need to statutorily revise the method by which the budgeted funds of the Jury Commission were handled. Both of these claims are asserted through 42 U.S.C. 1983. Plaintiff also asserts various state law claims under the pendant jurisdiction of this court.

(Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss, p.2). Plaintiff relies upon Frazier v. King, 873 F.2d 820 (5th Cir. 1989) wherein the Fifth Circuit set forth plaintiff's burden as follows:

> In order to establish a constitutional violation Frazier must first prove that her speech

> involved a matter of public concern. [citation omitted] Second, she must demonstrate that her interest in 'commenting upon matters of public concern' is greater than the defendants' interest in 'promoting the efficiency of the public services [they] perform.' [citation omitted] Third, she must show that her speech motivated the defendants' decision to fire her. If Frazier is able to prove these three elements, the burden shifts to the defendants to prove that they would have fired Frazier even if she had not exercised her right to free speech.

The Court in Frazier found that the defendants had violated the plaintiff's First Amendment rights and also held that the defendants were not entitled to qualified immunity.

> There has been extensive publicity over the past decade concerning the rights and protections afforded whistle blowers. A reasonable official would know that it would be a violation of Frazier's rights to fire her after she blew the whistle on the improprieties at the prison. See Brawner, 855 F.2d at 193 (stating that a "reasonably objective public official would have known that termination of an employee for his speech concerning misconduct by public officials would violate a clearly established constitutional right").

> Defendants contend that Frazier is distinguishable

"[b]ecause the plaintiffs have alleged facts which fully support the dismissal of Mr. Cassanova from his employment, independent of any 'speech' related action, qualified immunity attaches." (Defendants' Reply Memorandum, p. 6). However, defendants are confusing their burden of proof (as it may be shifted to them) concerning whether plaintiffs' constitutional rights were actually violated with their defense of qualified immunity. Defendants' contention that they had a lawful reason for firing Mr. Cassanova may be relevant regarding whether Mr. Cassanova's rights were in fact violated but not regarding whether the rights allegedly violated were clearly established.

Plaintiffs allege that Mr. Cassanova was fired because, inter alia, he exercised his First Amendment rights and that the reasons given by defendants for seeking to have Mr. Cassanova terminated were pretextual. For purposes of defendants' motion to dismiss, these allegations must be taken

as true.[2] Therefore the dispositive issue is whether the right allegedly violated was a clearly established right. If so, the defendants are not entitled to qualified immunity. The Fifth Circuit has recognized that the right of an employee to blow the whistle on misconduct of public officials is a clearly established constitutional right and that defendants who violated that right are not, therefore, entitled to qualified immunity. See, Frazier, supra, and cases cited therein.

Further, qualified immunity is an affirmative defense which must be pleaded by defendants. Harlow v. Fitzgerald, 457 U.S. 813, 815, 102 S.Ct. 2727, 2736 (1982). Thus, plaintiffs' complaint may only be dismissed on grounds of qualified immunity if "the defense clearly . . . appears on the face of the pleading." Wright & Miller, § 1357, pp. 348–49.

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[2] In ruling on a motion to dismiss, the Court must accept as true all well pleaded facts and all inferences from those facts and must construe the complaint liberally in favor of the plaintiff. American Waste & Pollution Control Co. v. Browning–Ferris, Inc., 949 F.2d 1384 (5th Cir. 1991).

This Court finds that the defense of qualified immunity does not clearly appear on the face of plaintiffs' complaint.

Accordingly,

IT IS ORDERED that defendants' motion to dismiss on grounds of qualified immunity is DENIED.

IT IS FURTHER ORDERED that defendants' motion to stay discovery pending determination of defendants' motion to dismiss on grounds of qualified immunity is DENIED as moot.[3]

New Orleans, Louisiana, this 2 day of June, 1994.

sig/Edith Brown Clement
EDITH BROWN CLEMENT
UNITED STATES DISTRICT JUDGE

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[3] Defendants have not requested that discovery be limited to the issue of qualified immunity, contending that there are no facts in dispute underlying the issue of qualified immunity which require discovery. Therefore, this Court does not so limit discovery.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NOEL PATRICK CASSANOVA and KAREN SULLIVAN CASSANOVA	CIVIL ACTION
VS.	NO. 94-0376
FRANK A. MARULLO, JR., JAMES F. McKAY, III, DENNIS J. WALDRON, MORRIS REED, GERARD J. HANSON, PATRICK QUINLAN, CALVIN JOHNSON, and FRANK SHEA	SECTION "N" MAGISTRATE (1) JURY DEMAND

AMENDED COMPLAINT

The complaint of Noel Patrick Cassanova ("Cassanova"), and Karen Sullivan Cassanova, husband and wife, both residents of the full age of majority and domiciled in the Parish of Orleans, State of Louisiana, respectfully represents:

1.

This district court has original jurisdiction over the

claims and causes of actions asserted in this civil action pursuant to 28 USC Sec. 1331 and 1343.

2.

Venue is proper in this district court pursuant to 28 USC Sec. 1391(b) in that all defendants reside in this judicial district and, further, the claim arose in this judicial district.

3.

The following persons are made defendants herein and are sued personally:

A. **FRANK A. MARULLO**, a resident of the full age of majority of the Parish of Orleans, State of Louisiana;

B. **MORRIS W. REED**, a resident of the full age of majority of the Parish of Orleans, State of Louisiana;

C. **PATRICK H. QUINLAN**, a resident of the full age of majority of the Parish of Orleans, State of Louisiana;

D. **CALVIN JOHNSON**, a resident of the full age of majority of the Parish of Orleans, State of Louisiana;

E. **FRANK J. SHEA**, a resident of the full age of majority of the Parish of Orleans, State of Louisiana;

F. **JAMES F. McKAY**, a resident of the full age of majority of the Parish of Orleans, State of Louisiana;

G. **GERARD J. HANSEN**, a resident of the full age of majority of the Parish of Orleans, State of Louisiana;

H. **DENNIS WALDRON**, a resident of the full age of majority of the Parish of Orleans, State of Louisiana.

4.

The Board of Jury Commissioners for the Parish of Orleans (hereinafter "Board") is a statutorily created governmental entity of the State of Louisiana which is charged with the responsibility of securing juries for criminal and civil courts in Orleans Parish. Under the provisions of Code of Criminal Procedure Art. 404 and 404.1 the Board is composed of five commissioners appointed by the governor who serve at his pleasure. Under the provisions of R.S.

15:111 the commissioners "shall elect a secretary of the board of jury commissioners". This secretary is commonly referred to as "Executive Director" and shall be referred to as such hereinafter. The Board and its employees shall be referred to hereinafter as "Jury Commission".

5.

In 1986, Louisiana Code of Criminal Procedure Article 404.1 was enacted. This article transferred the accounting functions of the Jury Commission to the Judicial Administrator of the Criminal District Court for the Parish of Orleans, which, according to the statute, had certain supervisory functions over the Commission. Prior to that time, all check writing and accounting functions were done by an employee of the Board under the supervision of the Board. Subsequent to the transfer, the financial and check writing functions were done pursuant to the direction and control of certain judges on the Criminal District Court.

6.

On February 3, 1993, a special meeting of the Board was held for the purpose of filling the vacant position of Executive Director of the Board. Plaintiff, Cassanova, by unanimous vote, was appointed to fill that position at a salary of $38,000.00 per year, plus applicable fringe benefits, which appointment was retroactive to February 1, 1993. As Executive Director, Cassanova was responsible for the proper functioning of the Board and Jury Commission, their business dealings and financial integrity.

7.

Cassanova had been recommended to serve as Executive Director by Governor Edwin Edwards. Prior to plaintiff assuming his position, he met with the Executive Counsel for the governor for the purpose of discussing his appointment. At this meeting plaintiff was informed that as Executive Director his duties required him to thoroughly

analyze the financial records of the Board, particularly in regard to payroll and budget, for the lurpose of determining whether public monies were being properly and prudently spent, whether those receiving checks from the Board were actually employed by the Board, and whether the level of funding was appropriate to meet the needs and responsibilities of the Board.

8.

Having assumed his position, and in compliance with the duties imposed upon him by his position, plaintiff sought to review the Jury Commission's payroll account, operating account, budget and inventory control sheets. Cassanova learned that these records had been taken by the Judicial Administrator and Judge Marullo. Cassanova requested the records from the Assistant Judicial Administrator and was informed by her that she maintained the payroll and operating account, that the Judicial Administrator maintained the budget

and that an employee of the Judicial Administrator had the inventory control sheets. Cassanova was initially informed that the records would be readily made available to him; however, when he sought to pick up the records two days later, he was informed by the Assistant Judicial Administrator that Judge Marullo had ordered her to prohibit plaintiff from viewing or taking possession of the records.

9.

Although Judge Marullo is not the chief judge of the Criminal District Court, he exercises power and control over the operations and policies (formal and informal) of the Court, the hiring and firing of personnel and the operation of the Criminal Court Building out of proportion to the power and authority exercised by other members of the Court.

10.

After being denied access to the records, plaintiff called the Governor's office and informed the Governor's

Executive Counsel of his inability to obtain the records. Plaintiff was informed that the Board, as a matter of law, had a right to the records. Plaintiff returned to the Assistant Judicial Administrator to reassert his right to review the records. Plaintiff was informed by the Assistant Judicial Administrator, the Judicial Administrator as well as the employee in possession of inventory control sheets that they were forbidden by Judge Marullo from providing plaintiff with the records and that he would have to appear before and en banc meeting of the Criminal Court to request the records from all of the judges.

11.

Plaintiff informed Judge Jerome M. Winsberg, Chief Judge of the Criminal Court, of his inability to obtain the requested financial records. Judge Winsberg provided plaintiff with a copy of the budget and stated that he would assist plaintiff in obtaining the other records.

12.

The day plaintiff obtained a copy of the budget he reviewed it with the Chairperson of the Board as well as the Jury Pool Coordinator who were both long term employees of the Board. Review of the budget showed employees carried on the Board's payroll who could not be identified as working for the Board. Plaintiff also was provided partial inventory control sheets which revealed a purchase in excess of $5,000.00 for Queen Anne furniture which was listed as being used in the Jury Commission Office. This furniture, however, was not being used by the Jury Commission nor had it been used by the Board.

13.

The en banc meeting was held on March 1, 1993. At this meeting plaintiff stated that he desired to review the payroll, operating account, budget and inventory control sheets of the Board. Judge McKay inquired as to the purpose

of the request. Plaintiff responded that it had come to his attention and the attention of the Board that considerable sums of money allocated to the Jury Commission had been used on furniture and payroll totally unrelated to Jury Commission activities. At this point Judge Marullo stated that there was no Jury Commission, that the Criminal Court had taken over the Commission and that any funds budgeted to the Board were for the exclusive use of the Criminal Court. Plaintiff informed the Court that he would communicate this statement to the Governor's Executive Counsel. Judge McKay stated that plaintiff would be provided with a copy of the budget and that if the budget ended up in the press the judges would now how it got there. No mention was made of the other records. The minutes of the meeting reflect that the Court voted to provide plaintiff a copy of the budget of the Jury Commission.

Plaintiff conveyed the results of the meeting to the Governor's Executive Counsel and was informed that the funds budgeted for use by the Board were for the exclusive use of the board and not for the use of the Criminal Curt or individual judges.

15.

Several days subsequent to the en banc meeting plaintiff received from the Assistant Judicial Administrator certain financial records of the Board, including payroll records and inventory control sheets. These records were reviewed by plaintiff, the Board's Chairperson and Jury Pool Coordinator. This review indicated approximately $25,000.00 travel expenses charged to the Board and paid for from the Board's funds. Investigation revealed that the actual funds expended but the Board over the entire time period was approximately $2,000.00. Further investigation revealed that the balance of approximately $23,000.00 had been used by

the Criminal Court Judicial Administrator purportedly to lobby the Louisiana Legislature in Baton Rouge on behalf of the Orleans Criminal Court. Other questionable payroll and property entries were also discovered. In addition, it was discovered that the audit for the Orleans Criminal Court was paid entirely from the Board's funds.

16.

Plaintiff informed the Governor's Executive Counsel of what was revealed by examination of the records. Plaintiff was informed that if the court was acting in this manner that these practices were very questionable. Plaintiff informed the Judicial Administrator and members of the Court that he had been informed that such practices were questionable.

17.

Judge Marullo and the Judicial Administrator stated that the previous practices would not be stopped and the funds would be used for whatever purpose he (Marullo) or

the Court pleased. The Governor's Executive Counsel was informed that no changes in the practices of the Judges were forthcoming.

18.

Proposed legislation was drafted, which among other things, would have transferred accounting functions from the Judicial Administrator back to the Board. A copy of the proposed legislation was provided to the Court by plaintiff. The Criminal Court en banc discussed the proposed legislation and at this meeting Judge Marullo stated, among other things, that he (Marullo) would have plaintiff's job and take him off the payroll. Defendants stated that they were opposed to the proposal.

18.

Plaintiff met with Judge Marullo in his chambers to discuss the proposed legislation and his attempts to review the financial records of the Board in his capacity of Executive

Director of the Board. In this meeting Judge Marullo informed plaintiff that if he did not prevent the filing of the proposed legislation, Marullo would have him terminated from his job after the legislative session. Judge Marullo's position, as expressed to plaintiff, was that it was Marullo's building, jobs and money and that any one who did not agree with that position would have to go.

19.

The day after meeting with Judge Marullo, the proposed legislation was filed.

20.

In compliance with a request from the Executive Counsel, plaintiff, on April 21, 1993, wrote Governor Edwards formally informing him of the results of his examination of the records of the Board.

21.

In response to this letter the Governor instructed

plaintiff to call a special meeting involving Judge Marullo, representing his position, Chief Judge Winsberg, on behalf of the Court, plaintiff, representing the Board, and the Governor's Executive Counsel. This meeting was held at the Criminal District Court in New Orleans and was attended by Judges Marullo, McKay, Shea, Winsberg and Cannizzaro, the Assistant Judicial Administrator, plaintiff and the Governor's Executive Counsel. Plaintiff was requested by Judge McKay to remain out of the meeting room at the beginning of the meeting. Plaintiff has been informed that shortly after the meeting began the Governor's counsel asked Judge Marullo whether it was true that the Board's funds had been used for lobbying purposes. In response, Judge Marullo stated that as far as he was concerned the meeting was over and walked out. As he walked past plaintiff Judge Marullo stated: "You've dug a big hole for yourself. You are out of here. You are finished."

22.

Plaintiff was called into the meeting by Judge Winsberg and was present for the balance of the meeting. During the meeting Judge McKay stated that the Criminal Court had no authority to use jury commission funds on an payroll or other expenses unrelated to jury commission activities. He further stated that he could not justify using the Board's funds on non-Board business. Nevertheless, he stated that he opposed the proposed legislation. Judges Cannizzaro and Winsberg stated that they favored the legislation.

23.

On May 1, 1993, plaintiff requested an opinion from the Attorney General's office whether the Criminal Court had the authority to fire him as Executive Director.

24.

On or about May 7, 1993, the Chairperson of the

Board was requested by the Judicial Administrator to sign a letter drafted on Jury Commission letterhead but not prepared by the Jury Commission attesting to the truthfulness of the financial statement filed with the Legislative Auditor, including all funds under the control of the Jury Commission. Because of the investigation into the use of the Jury Commission funds and the discovery of questionable expenditures the Chairperson refused to sign the letter. This fact was transmitted to defendants.

25.

As a result of requesting an Attorney General's opinion the Attorney General's office inquired as to the number of classified employees hired by the Board. Plaintiff responded "none". He was then informed that that had to be incorrect. Subsequent investigation revealed that the Board's employees, according to the Director of Civil Service, had been improperly removed from state classified service, at the

urging of Judge Marullo, in October, 1989. In July, it came to plaintiff's attention that several of the Board's personnel were listed as unclassified employees, which, according to the Attorney General's office, was improper. Plaintiff then contacted the State Civil Service Commission for the purpose of transferring the Board's unclassified employees to classified status. On August 17 plaintiff received a directive from Herbert Sumrall, Director, Louisiana Civil Service, instructing plaintiff that Commission employees should be in state classified service. Plaintiff then began to institute proceedings to have the Board's employees classified under Civil Service which activities were known to defendants.

26.

On June 15, 1993, plaintiff received his last check.

27.

Plaintiff subsequently learned that the Court voted to fire him from his position as Executive Director on June 24,

1993. The minutes of an en banc meeting held on that date show that Judge Marullo moved to fire plaintiff, which motion was seconded by Judge McKay. Those voting to terminate plaintiff were Judges Frank J. Shea, Frank A. Marullo, Jr., Gerard J. Hansen, James F. McKay, III, Patrick Quinlan, Calvin Johnson and Morris Reed. The minutes of the meeting do not give a reason for the termination.

28.

At no time has plaintiff received any formal notification from the Court that he had been terminated. Plaintiff has since learned that a "Separation Notice Alleging Disqualification" was prepared on June 24, 1993, and signed by Judge Marullo, stating that "Mr. Cassanova was dismissed because of absenteeism due to his attending legislative hearings in Baton Rouge when he should have been in New Orleans" as well as for "failure of performing his duties in the Jury Commission's Office because of his chronic

absenteeism". On July 13, 1993, a document was signed by Judges Reed, Quinlan, Marullo, Johnson, Waldron, Shea, McKay and Hansen ordering the Judicial Administrator's Office to remove plaintiff from the Jury Commission payroll. In addition, an "official letter of notification", dated June 24, 1993, and signed by Judges Reed, Quinlan, Marullo, Johnson, Shea, McKay and Hansen" stated that plaintiff was terminated for the reasons set forth above, and in addition stated that his termination was also "due to other budgetary restraints."

29.

The termination of plaintiff's employment by defendants and the ordering of the cessation of his paychecks was done without legal cause or authority and in retaliation for plaintiff engaging in constitutionally protected activity. Such action was done by defendants in their administrative capacity for which actions they are personally responsible and liable.

30.

On July 8, 1993, the Attorney General issued opinion No. 93-404 which concluded that only the Board could terminate its Executive Director. At no time has the Board taken any action to terminate plaintiff as director. On the contrary, the Board has supported his actions.

31.

On July 15, 1993, the Board wrote the Judicial Administrator and made a formal request that plaintiff be paid. On August 12, 1993, Governor Edwin Edwards wrote the Judicial Administrator, instructing him to reinstate plaintiff on the payroll and to make back payments owed to plaintiff to make him current.

32.

On August 12, 1993, Jerome M. Winsberg, Chief Judge for the Orleans Criminal District Court instructed the Judicial Administrator to reinstate plaintiff on the payroll and

make all back payments current.

33.

On August 17, 1993, a letter was directed to plaintiff, as Executive Director of the Board, from Herbert L. Sumrall, Director, State of Louisiana Department of Civil Service, informing plaintiff that certain employees of the Board should properly be civil service employees and requesting plaintiff to submit certain forms to facilitate their classification.

34.

On August 17, 1993, a vote was taken by the Court not to reinstate plaintiff nor to pay him "his salary or any back payments." Those voting in favor of this motion were Judges Quinlan, Hansen, Johnson, Marullo, Reed, Shea and McKay (his vote, according to the minutes, having been case by Judge Marullo in absentia).

35.

Plaintiff has continued to perform his duties as

Executive Director of the Board, even though he has not been paid, and he reports to his office in the Criminal Court building on a daily basis.

36.

On December 22, 1993, Judge Marullo, in explaining the termination of Cassanova, appeared on television Channel 6, which broadcasts over the New Orleans area and beyond, and stated that plaintiff "... was collecting money from the state in an amount which would cost this court $42,000.00 and didn't want to come to work and he was in Baton Rouge and not here and I think that's a felony and he was a deadhead." Such derogatory comments are untrue, libelous per se and have caused damage to plaintiff.

37.

Plaintiff received no due process in the alleged termination of his employment. Plaintiff was not notified that the question of his employment was to be considered by

defendants prior to their taking action seeking to terminate his employment. Plaintiff was given no opportunity to appear before the Court, respond to questions concerning his employment or present his position or defense to charges raised against him.

38.

The reasons given by defendants for plaintiff's termination and cessation were a pretext. Based on the circumstances of his firing and information provided to plaintiff, it is plaintiff's belief, and he so alleges that defendants, at the urging of Judge Marullo, took retaliatory action to terminate his employment, restrict his access to documents and limit his ability to inform others of questionable practices of public concern because:

A. Cassanova exercised his right to free speech in reporting to appropriate state authorities, namely, the Governor, the Governor's executive counsel, legislative auditor and director of the

Civil Service Commission, questionable personnel, payroll and financial practices which were matters of public concern.

B. Cassanova exercised his right to free speech, the right to peaceably assemble and to petition the Government for a redress of grievances by engaging in the political process by 1) supporting and assisting in the attempted passage of legislation in the Louisiana legislature which affected the Board and Jury Commission and 2) in assisting Board personnel in being classified under state civil service.

C. Cassanova exercised his right to free speech in bringing to the attention of the Court en banc financial and personnel practices which were questionable and were matters of public concern.

D. by investigating the financial and payroll practices of the Board, as controlled by the Court through certain of its members, chiefly, Judge Marullo, Cassanova placed the Court in a position that past and present practices of the Court and certain of its members would be made public and subject the Court and certain of its member to

public scrutiny for the reason that Cassanova was informing persons outside of the Court, including governmental authorities, of questionable financial, personnel and payroll practices, which ere matter of public concern.

39.

Cassanova was wrongfully "terminated" and payments to him "suspended" without lawful cause, by State Judges acting in administrative and not judicial capacities, whom under the color of state law, in the form of state action, intentionally disregarded state and federal law by conduct involving a reckless disregard or callous indifference to Cassanova's rights, and, in doing so, wrongfully damaged plaintiffs.

40.

Cassanova was damaged economically, through the loss of his employment, the deprivation of his income, and the incurring of medical bills. Cassanova was damaged

physically in that he was treated for a suspected heart attack as a result of stress arising from the actions of defendants. As a result of the actions of defendants plaintiffs were damaged emotionally, through mental anxiety an distress, humiliation, disruption of their family life, and financial stress.

41.

The actions of defendants and the consequential damage sustained by thereby giving rise to the following federal and state causes of action:

CAUSES OF ACTION

COUNT ONE

42.

Cassanova adopts Paragraphs 1 – 41 above.

43.

The actions of defendants constitute the deprivation of and violation of Cassanova's constitutional rights as protected

by United Stated Constitution, First and Fourteenth Amendments, Louisiana Constitution's 1974, Article 1, Section 4, in particular the right to free speech, the right to peacefully assemble and to petition the government for redress of grievances, all of which give rise to causes of action under the foregoing articles, and as such are cognizable under 42 U.S. 1983, and the law of Louisiana including Article 1, Section 4, Louisiana Constitution.

COUNT TWO

44.

Cassanova adopts Paragraphs 1–43 above.

45.

The actions of defendants constitute the deprivation of and violation of Cassanova's right to due process of law as protected by the United States Constitution, Fourteenth Amendment, and Louisiana Constitution of 1974, Article 1, Section 2, thereby giving rise to a cause of action under 42

USC Sec. 1983 and the law of Louisiana.

COUNT THREE

46.

Cassanova adopts Paragraphs 1–4 above.

47.

The actions of defendants constitute the deprivation of and violation of Cassanova's privileges and immunities as protected by the United States Constitution, Fourteenth Amendment, and Louisiana Constitution of 1974, Article 1, Sections 3, 5 and 7, thereby giving rise to a cause of action under 42 USC Sec. 1983 and the law of Louisiana.

COUNT FOUR

48.

Cassanova adopts Paragraphs 1–47 above.

49.

The actions of defendants constitute the deprivation of and violation of Cassanova's right as a public employee to be

free and protected from retaliation, reprisals for obeying the law, for cooperating with governmental authorities, for reporting questionable activity to members of the court, the governor's office, the legislative auditor, the Board of Jury Commissioners, the Civil Service Commission and other governmental officials. Those actions of defendants violate the United States Constitution, First and Fourteenth Amendments, Louisiana Constitution of 1974, Article 1, Sections 2, 3, 5, and 7, and also LSA – R.S. 482:1169, thereby giving rise to a cause of action under 42 USC Sec. 1983 and the law of Louisiana.

COUNT FIVE

50.

Cassanova adopts Paragraphs 1–49 above.

51.

Defendants, by seeking to terminate and interfere iwth his position of executive director, chose to treat Cassanova,

a whistleblower, differently from others over whom defendants claimed to have authority, and thus deprived and denied Cassanova of his right to equal protection of the law as guaranteed by the United States Constitution, Fourteenth Amendment and the Louisiana Constitution of 1974, Article 1, Section 3, thereby giving rise to a cause of action under 42 USC Sec. 1983 and the law of Louisiana.

COUNT SIX

52.

Cassanova adopts Paragraphs 1–51 above.

53.

Defendant Frank Marullo has slandered plaintiff, as stated in paragraph 36, giving rise to a cause of action for defamation under Louisiana law.

COUNT SIX A

53A

Plaintiffs include by reference all previous allegations.

Defendatns defamed Noel Casanova because of untrue statements made in the document described in paragraph 28 above and which are:

> "Mr. Cassanova's termination from this position is based upon the following enumerated reasons:
>
> 1) Absenteeism due to his attending Legislative hearings and meetings in Baton Rouge when he should have been in New Orleans;
>
> 2) Failure of performing his duties in the Jury Commission's Office because of his chronic absenteeism;

COUNT SEVEN

54.

Plaintiffs adopt Paragraphs 1–53 above.

55.

Plaintiff, Karen Cassanova, asserts a cause of action because of the damages sustained by her as a result of the unlawful actions of defendants.

COUNT EIGHT

56.

Plaintiffs adopt paragraphs 1–55 above.

57.

Defendants intentionally and tortiously interfered with plaintiff's contractual rights with his employer, The Board of Jury Commissioners for the Parish of Orleans, by instructing the Judicial Administrator to withhold payment of Cassanova's salary for work performed as the Board's Executive Director and for work which he continues to perform.

COUNT NINE

58.

Plaintiffs adopt paragraphs 1–57 above.

59.

The acts of defendants as described herein in ordering the cessation of Cassanova's paycheck for the reasons described above was conduct of such an outrageous nature as to entitle plaintiffs to recover damages.

DAMAGES

60.

The actions of defendants have cause economic and emotional injuries and damages to Noel Cassanova, in sums no less than those set out as follows:

A.	Past wage/salary (award of back pay) from date of termination to anticipated trial date	$ 100,000.00
B.	Present value of future wage/salary lost, including fringe benefits	300,000.00
C.	Pain and suffering, mental anguish and distress, public embarrassment, humiliation and damage to reputation	500,000.00

D. Medical bills, past and future 5,000.00

D. Punitive and exemplary damages 800,000.00

E. Attorney's fees pursuant to 42 USC Sec. 1988 . . . . . 300,000.00

TOTAL DAMAGES . . . . . $ 2,005,000.00

61.

Karen Cassanova has suffered mental anxiety and distress, pain and suffering, physical injury as a result of stress, humiliation and disruption of her family life, and medical bills, all damaging her in the sum of $300,000.00.

62.

Cassanova requests a trial by jury on all appropriate issues.

63.

Cassanova reserves the right to amend and supplementthis Complaint at a later date as additional

information becomes available through discovery. Cassanova reserves the right to name other persons as defendants if discovery reveals that they violated applicable laws.

WHEREFORE, Noel Patrick Cassanova prays for judgment in his favor and against the defendants as solidary obligor as follows:

A. $905,000.00 in actual damages;

B. $800,000.00 in punitive or exemplary damages;

C. $300,000.00 in attorney's fees and other taxable costs;

D. For interest and costs as the law permits;

E. For trial by jury on all appropriate issues; and

F. For all general and equitable relief to which he may be entitled.

Karen Sullivan Cassanova prays for judgment in her favor and against the defendants in solido as follows:

A. $300,000.00 in actual damages;

B. $300,000.00 in punitive or exemplary damages;

C. $300,000.00 in attorney's fees and other taxable costs;

D. For interest and costs as the law permits;

E. For trial by jury on all appropriate issues; and

F. For all general and equitable relief to which he may be entitled.

By Attorneys:

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has

been furnished to the following counsel of record by U.S. Mail, postage prepaid.

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Counsel for Frank A. Marullo, Jr.

Baton Rouge, Louisiana this 29th day of March, 1995.

sig/Charles R. Moore
CHARLES R. MOORE

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides:

> **Amendment I -- Freedom Of Religion, Speech And Press; Peaceful Assemblage; Petition Of Grievances**
>
> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fourteenth Amendment to the United States Constitution provides in part:

> **Amendment XIV -- Citizenship; Privileges And Immunity; Due Process; Equal Protection; Apportionment Of Representation; Disqualification Of Officers; Public Debt; Enforcement**
>
> **Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any

State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

42 U.S.C. §1983 provides:

§1983. Civil Action For Deprivation Of Rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunity secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit inequity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be a statute of the District of Columbia.

La. C.C. art. 2747 provides:

Art. 2747. Contract of servant terminable at will of parties

A man is at liberty to dismiss a hired servant

attached to his person or family, without assigning any reason for so doing. The servant is also free to depart without assigning any cause.

La.C.Cr.Proc. art. 404.1 provides:

Art. 404.1. Powers, duties, and functions of the Board of Jury Commissioners in parishes of 475,000 or more[1]

A. Notwithstanding any other law to the contrary, this article shall apply to the Board of Jury Commissioners in parishes of 475,000 or more in population. In such parishes, there shall be a Board of Jury Commissioners, hereinafter referred to as "the Board", composed of five members appointed by the Governor, subject to confirmation of the Senate, to serve at his pleasure. The Board shall meet at least once every six months and when it is ordered to do so by the Court, and may meet to select or supplement the general venire for grand and petit jurors. Three members shall constitute a quorum. The Board may select a new general venire at any meeting and shall do so when ordered by the Court.

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[1]Orleans Parish is a parish of 475,000 or more.

B. The Board in such parishes may, with the concurrence of the judges of the Criminal District Court, have subpoenas served through personal or domiciliary service by depositing same in the United States Mail, regular, certified, or registered, addressed to the juror at his usual residence or business address. The date of mailing shall be not less than fifteen days prior to the date on which the addressee is subpoenaed to appear. When service is by regular mail, the Board of Jury Commissioners shall retain a record of the date of mailing. In the case of service by regular mail, or prior to any contempt citation, the person shall be served by registered or certified mail with return receipt requested. If service is made by registered or certified mail with return receipt requested, the return receipt shall be retained by the Jury Commission as proof of proper service and failure of the person to respond to the subpoena so served shall constitute contempt of Court.

C. The municipality which the Board ser ves in such parishes shall cooperate with the Board to provide the Board with records, computer and other equipment, voter registration roles,

tapes, and other items which it needs to compile the general venire of grand jurors and petit jurors at no cost to the Board.

D. The Board in such parishes shall develop a plan to govern its operation. The plan shall be approved by a majority of the judges of the Criminal District Court of such parishes.

E. The Board shall have the authority over all of its employees, subject to the supervision by the Criminal District Court. The Board, by majority vote, shall determine all matters related to its jurisdiction, subject only to the approval of the judges of the District Court or Criminal District Court.

F. The accounting functions of the Board and of the Jury Commission shall be transferred to the Judicial Administrator of the Criminal District Court.

G. All procedures and policies developed by the Jury Commission shall be under the direction and subject to the approval of the Criminal District Court, en banc.

La.C.Cr.Proc. art. 404 provides in part:

Art. 404. Appointment of Jury Commission; Term of Office; Oath;Quorum; Performance of Function in the Parish of East Baton Rouge by the Judicial Administrator; Performance of Function in the Parish of Lafourche by the Clerk of Court

A. Except in the Parish of East Baton Rouge;

(1) the Jury Commission of each parish shall consist of five members, each having the qualifications set forth in Article 401.

(2) In Orleans Parish the Jury Commission shall be appointed by the Governor, and the commissioners shall serve at his pleasure. In other parishes the Jury Commission shall consist of the Clerk of Court or a Deputy Clerk designated by him in writing to act in his stead in all matters affecting the Jury Commission, and four other person appointed by written order of the District Court, who shall serve at the Court's pleasure.

(3) Before entering upon their duties, members of the Jury Commission shall take an oath to discharge their duties faithfully.

(4) Three members of the Jury Commission shall constitute a quorum.

(5) Meetings of the Jury Commission shall be open to the public.

B. and C. [these Subsections apply only to the Parishes of East Baton Rouge and Lafourche and not to the Parish of Orleans. Therefore, they have been omitted from this quotation.]

La. R.S. 15:111 provides:

§ 111. Parish of Orleans; salary of jury commissioners; vacancy; appointment of secretary

Each of the jury commissioners for the Parish of Orleans shall receive a salary of not less than $ 4,200.00 per annum.

The commissioners shall select a secretary of the Board of Jury Commissioners. The Secretary of the Board shall receive a salary of not less than $ 4,000.00 per annum.

The salaries of the jury commissioners and the secretary shall be payable monthly by the City of New Orleans; provided that the City of New Orleans shall be required to budget and continue to pay to the jury commissioners and the secretary the amount presently budgeted and that any increase in the amount of salaries presently paid by the City of New Orleans occasioned by the passage of this bill shall not be effective unless and until ratified and approved by the City Council.

If in the case of absence or inability to act for any cause, there shall be no quorum of the Board of Commissioners the Governor shall appoint commissioners to fill said temporary vacancy or vacancies, who shall have the power of jury commissioner under the Code of Criminal Procedure.